

#3  
March 21, 1946

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Hon. G. M. Baker  
House of Representatives  
Phoenix, A r i z o n a

Dear Sir:

In compliance with your request of the 13th inst., for an opinion on the constitutionality of House Bill No. 56, Chapter 15, of the Session Laws of 1945, relating to unclaimed money or property in the hands of public officials:

So far as the form and style of the act, on the face of the act itself is concerned, it appears constitutional. However, the difficulty under the provisions of the act arises when an officer of the State disposes of property that belongs to another. The question then arises whether there is sufficient authority in an administrative officer to determine the facts and dispose of the property under the act without violating the individual constitutional rights of the owner of the property.

Apparently the act was drafted to accommodate the convenience of the State which has an increasing quantity of property, goods, and money belonging to others gathered from exhibits in evidence lost in unclaimed property, together with gambling devices.

Fundamentally, the drafters of the constitution were more concerned with the rights of the individual and the protection of his freedom and property interests than in the convenience of the State. Unusual safeguards were written into the fundamental law that property could not be disposed of without some notice, some form of procedure or hearing.

The one exception that the courts have made is in allowing the State to destroy property seized for its unlawful use is gambling equipment. Our Supreme Court, however, has held that until the Legislature authorized the destruction of gambling property, there was no inherent power in the courts to order destruction. The Supreme Court, in 1935, however, held that although there was no inherent power to destroy gambling equipment, it was contrary to public policy to return it to its owner. It was over ten years ago that it was suggested in that decision that the Legislature should make some authorization for the disposal of property.

Chapter 15 is contradictory in providing that property used for gaming purposes shall not be sold and then providing that no property shall be disposed of until it is offered for sale and fails to sell. No administrative officer can read and understand

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this language. It has been settled by our Supreme Court that gaming devices cannot be destroyed until there is a law that authorizes it. No particular notice nor time to hold the equipment before destruction is ordered is necessary.

On the other hand, Chapter 15 authorizes the conversion of money, or other property, after being held for a period of six months. The Supreme Court in 60 Ariz. 153 thoroughly indicated that merely the lapse of time within which an owner failed to assert his ownership would not justify conversion of his property.

The courts have indicated, through a long line of decisions, that the proper method for the State to use for the destruction of property unlawfully used, or other property in the hands of the State, is through a libel proceeding. Chapter 15 sets up no machinery, procedure, or other method to protect the administrative officer from an action of damages by the lawful owner of the property.

This same act was the subject of an opinion by the County Attorney of Maricopa County rendered August 8, 1945. In that opinion the county officers were advised of their personal liability if they undertook to act under the provisions of Chapter 15.

We are of the opinion that the advice of the Maricopa County Attorney was correct.

Very truly yours,

JOHN L. SULLIVAN  
Attorney General

JLS:jm

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